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HINDU LAW REFORM—PROPOSALS IN MYSORE AND BARODA.

There seems to be fairly general agreement that Hindu Law stands in need of some modification—having regard to changed social conditions—though there may be considerable difference of opinion as to any particular modification proposed. There may be some people—their number is, however very small—who are opposed to all change but even in their case the objection is more grounded on a doubt as to the wisdom of the change than on any feeling as to its repugnance to religion. In fact, judging from what the leading commentators of the Mitakshara School say, it seems to be clear that they do not regard the particular rules of inheritance they are laying down as having the same authority as vedic injunctions relating to morality or religion. On the other hand, they seem to be seeking justification for those rules very largely in usage. In putting forward the secular conception of property, Vijnaneshwara must be taken to have definitely rejected the theory of sacrosanctness and the recasting of those rules having regard to the changed conditions cannot be said to involve any serious interference with the religious feelings and sentiments of Hindus. It will be found on examination that much of the law that is administered to-day, in fact a large portion which causes dissatisfaction is judge-made law. For instance, Vijnaneswara is much more liberal to women than the Courts to-day. He did not accept the theory that women by reason of their sex are disentitled to inherit nor is there any foundation in his treatise for the rule that women take a limited estate in property inherited by them. All property however acquired is Stridhana according to his definition and it is judicial decisions that excluded inherited property from the category of Stridhana under the influence of the retrograde Bengal School.

Again, the theory that women *prima facie* take only a limited estate under grants *inter vivos* or by will is a creature of judicial decisions but happily so far as Madras is concerned, that view no longer holds the field. For this, we are indebted to the late Mr. Justice Seshagiri Aiyar to whom we are also indebted for several pieces of ameliorative legislation. The Madras Hindu Gifts and Bequests Act for which he was responsible did away with the rule as to the invalidity of gifts to unborn persons laid down by the Privy Council in the Tagore case. The Hindu Law of Inheritance (Act II of 1929) for the initiation of which also he was responsible, gives a certain amount of relief to women by bringing son's daughter, daughter's daughter and sister (and with her the sister's son also) before more distant relations into the Mitakshara line of heirs. They had been put off or excluded by Courts against the Mitakshara and out of deference to decisions from Bengal. The Hindu Inheritance (Removal of Disabilities) Act (XII of 1928) removes the disabilities of persons suffering from disease, deformity or physical defect from inheriting with one exception, *i.e.*, congenital lunacy or idiocy. The fact that these various Acts of the Legislature were carried through without any serious opposition is clear testimony in favour of the general agreement referred to above and of the fact that the Hindu mind has ceased to associate the rules of inheritance with religion. The most eloquent testimony is however afforded by another piece of legislation recently passed, *viz.*, the Hindu Gains of Learning Act. When the late Sir Bhashyam Aiyangar tried to pass a legislation to the same effect through the local legislative council, there was such a storm of opposition outside that the Governor was compelled to refuse his assent to the Bill although it had been passed by the Council. The present Act was passed without notice in the papers and without serious opposition in the Council.

There still remain several other matters which require consideration. They centre mainly round women's rights. There is a feeling that the position of widows of co-parceners in joint families requires improvement and that having regard to the larger probability in the future of women remaining unmarried, specially after the recent Sarda Act, long after attaining majority, some provision should be made for unmarried sisters. There is also a feeling that more women relatives should come in as heirs and with better regard to their propinquity than at present. There is further the feeling that women are unnecessarily restricted in their enjoyment of inherited property. One other

thing that is to be noticed in this connection to which sufficient attention is not paid is that a very large proportion of litigation in this country relates to the validity of alienations by limited owners and it is in the interest of the public that some means should be found for avoiding this unhealthy and vicious litigation. Added to this we have great uncertainty of title introduced by conflicting judicial decisions as regards the effect of surrender, consent of reversioners and so forth. Adoption is another prolific source of litigation. Here again, the law is largely judge-made law. On many points in connection with that matter, the law can hardly be said to be settled. For a long time arrangements by the widow with the natural parents of the adopted boy used to be held to be binding but recently the Privy Council has held otherwise. It must be the aim of legislators not to introduce further confusion and create other and further occasions for litigation. If a new rule is to be made, it should be clearly expressed and all its implications should be made easily ascertainable. Rules looking plain on paper, for want of sufficient thought on the part of the legislatures, so often bring in a legacy of ruinous litigation.

These matters have been the subject of consideration by two Committees, one in Mysore and another in Baroda who have made elaborate recommendations.

The latter Committee while dealing with women's rights have also taken advantage of the opportunity to recommend the abrogation of the rules as to disqualification to inherit by reason of disease or physical defect. They would go further in this matter than the Indian Act by removing all such disabilities. There would seem to be no point, however, in having a committee for the whole lifetime of a lunatic. In their puritanic zeal, the Baroda Committee, would also recommend that concubines and illegitimate sons should have no right of maintenance. This is in marked contrast to the provision in the Mysore Committee recommendations which brings illegitimate children of women as heirs to Stridhan. On the one hand we do not like that the humane provisions of the Hindu Law as to maintenance should be interfered with; on the other we are free to confess we do not equally like in the interest of morality and decency that rights of inheritance should be extended to illegitimate issue.

The Baroda Committee had the advantage of starting with the benefits conferred by the Bombay rule which is more liberal to women than the Madras or the Mysore Rule. The way in which the Mysore Committee have set about improving the

condition of women commands our assent, however, much one might be disposed to disagree with some of their recommendations. They build on the old foundations. They merely vary the details. For instance, they take the Mitakshara scheme, giving the unmarried sister, the mother and the step-mother a share and they extend the rule by giving them a share in all circumstances. But they overdo it and therein lies the weak point about their recommendations. The Baroda Committee give the right only to unmarried sisters and widows and confine it to joint family property. The Mysore Committee are more ambitious and catching hold of the theory of subordinate interest of wives and children even in a man's self-acquisition, propounded in the Mitakshara, make it a legal right and extend it to mothers, step-mothers, unmarried sisters and unmarried daughters. This is sentiment with a vengeance. When we speak of unmarried sisters, there is a point of time at which their status can be ascertained, that is the father's death. But when we speak of unmarried daughters, no such point of time is involved in the conception and in the absence of any provision that their right to a share should cease on marriage, it looks as if the result is we have a right by birth both in respect of sons and daughters. So little thought has apparently been bestowed on this part of the recommendation that care has not been taken to indicate what is to become if there are more than four sisters or daughters as the provision is that each sister and daughter should take in the absence of a brother living, a fourth of what her father would have taken. That may be a slip. It is provided, no doubt, that the right should not be enforceable in respect of self-acquired property during the lifetime of the acquirer. Right by birth is bad enough in favour of sons and some day may have to be abolished if India is to prosper industrially but rights in favour of daughters, sisters and step-mothers would seem to be indefensible. A further objection in relation to this matter is that sufficient care has not been taken to indicate the rights and powers of the acquirer or the managing member in the interval when the rights are not asserted. So far as one can see, it is not contemplated that the heirs of the ladies should be entitled to claim the share if they do not choose to assert their right. These provisions are apparently only designed to put the male members on good behaviour. When new kinds of rights are created, it is incumbent on the legislating authority to state clearly the implications of the rights so created. On the whole we think—subject to what we have to say about the widow's rights—that the recommendations

of the Baroda Committee are the only feasible or proper recommendations in this matter but even those recommendations have to be further supplemented by clear definition of the rights *inter se* and the powers of the members of the family.

Connected with this matter there is another equally novel recommendation in the Mysore Committee report about the personal liability for the maintenance of step-mother, unmarried daughter, legitimate or illegitimate, widow of pre-deceased son, unmarried sister and widowed daughter if destitute and unable to secure maintenance from the husband's family. The Smrithis with all their humanity, much beyond anything known till recently in the West, make provision in that way for the maintenance of only aged parents, chaste wife and infant children. They make provision for a very large body of relations as against joint family property. The Committee would seem to erect all the extravagant moral claims of family ridden India into legal claims including that of the step-mother with her proverbially strained relations with the step-sons without regard to whether they were living together or not, whether the father married after division or before, and whether there was family property or not and the same liberal scale of maintenance is provided for all cases alike. The Baroda Committee are more modest in its recommendations. They only add the destitute widowed daughter living with the family to the list of persons entitled to maintenance from the family property One should have expected the Committees consistently to impose a similar liability on mothers to maintain the children when they could afford or on the daughter-in-law to maintain the father-in-law or the mother-in-law, and the step-mother, the step son especially having regard to the large opportunities of acquiring wealth afforded by their recommendations.

The next recommendation of importance is the introduction of the female descendants and male descendants (through females) of the father, grandfather and great grandfather as heirs. That seems to be unexceptionable but the extension of the rights of inheritance to women connected only by marriage that is to say, to widows of the descendants as well as collaterals would seem to be wholly against prevailing sentiment and is contrary to the provisions of all the known other systems of civilised jurisprudence. The widows of members of the family are the only persons whose claims, we think, need be considered. The Mysore Committee recommend that the definition of Stridhan should be made to include the share got at partition pro-

perty inherited from husband and other relatives connected by blood, income and acquisitions from income of all properties held by women whether as Srtidhan or otherwise. In framing rules for succession, inherited property is made to descend to both sons and daughters. As between daughters they abolish the distinction between married and unmarried, provided and unprovided daughters. The distinction is abolished also with respect to property inherited from males with perhaps this distinction that the unmarried daughter is entitled to an additional share. That is a welcome change. The Baroda Committee would make children of pre-deceased daughters take with daughters. That would seem to be more in accordance with prevailing sentiment than the present rule.

The result of conferring the character of Stridhana on property inherited from husband and relatives male and female connected by blood is that only property inherited by widows of male relatives would be held for a limited estate. Even in those cases, their powers are extended so as to include power to spend for the maintenance and education of their descendants or for acts of charity. Partial surrenders and surrenders for consideration are recognised. Consent of reversionrs is taken to be sufficient to justify alienation. Litigation may thus be reduced to some extent, but one is not quite certain as to the result, as a new body of heirs are introduced whose desire to defeat the reversioner is likely to be greater than in the case of the previously recognised female heirs, for in most cases hitherto the next reversioners are daughters and daughters' sons. The Baroda Committee seek to achieve the same result by confining the right to challenge alienations to daughter, daughter's son, mother, father, brother, father's mother, sister, step-brother, step-nephew and step-sister. Another alternative which neither committee consider would seem to be to provide a cheap method by application to court after notice to reversioners as under the Settled Land Acts in England of securing an order of the court which might be made conclusive in the absence of fraud or collusion The Baroda Committee have introduced, however, another fruitful source of litigation by conferring on widows absolute estate up to 12,000 rupees out of their husbands' estate When we remember that widows are given share in joint family property the result might be they continue undivided for years together and in the absence of any method of keeping the absolute portion and the other portion distinct, there must be the greatest confusion and consequently litigation when division takes place,

Coming to the question of giving shares to widows of co-parceners, in joint family property, we are not at all sure that much popular sentiment can be found in favour of the proposal. The feeling is only that more liberal provision should be made for their maintenance. The award of half a share under the Mysore Committee recommendations might in cases of small property be less advantageous to the widows than the alternative right to maintenance. As however widows cannot be compelled to take a share, the recommendation might not be objectionable from the point of view of widows. But the popular sentiment being as said above, and having regard to the evils of over-partition, the probability, almost certainty of widows insisting upon partition on the advice of their relatives whenever advantageous and having regard to the facilities afforded by the new rule as to declaration of intention on the part of the co-parcener being sufficient to effect a severance putting it in his power to let in the ordinary rule of inheritance under which the widow or mother would be entitled to come in or to make other suitable arrangements it does not seem desirable that widows should be given a share in the joint family property. The very fact that the Mysore Committee are not prepared to declare in favour of tenancy in common in place of joint tenancy shows that though we are heading towards individual ownership, we have not yet arrived at a stage where we are prepared to abolish the joint family altogether. At the present juncture we should think the legislature should stop at liberalising the rule as to maintenance of widows and of giving a share to the unmarried sisters as contemplated by the Mitakshara in the joint family property. On the other hand we sympathise with the suggestion of making inherited property Stridhana if for nothing else for the reason that it will put a stop to the very undesirable and unhealthy conditions existing at present the widow and her relations trying to devise means how best to defraud the reversioners and the reversioners ever on the alert to badger and annoy the widow and the consequent ruinous litigation. It is not unlikely that removal of legal claims on the part of the reversioners will restore good feelings which may turn out to be much more advantageous to the parties sought to be benefited by the present rule. As for protecting women as against themselves, we do not believe in it at all. We think South India women are quite as able to manage as men-and even if they are not so at present, with larger opportunities for management they will soon become so.

The Mysore Committee would raise a presumption of authority to adopt similar to that raised in Bombay and would further validate all arrangements made with the natural parents of the adopted son for the benefit of the widow. That would seem to be a natural corollary to the recognition of absolute rights in widows in inherited property.

B. S.

CORRESPONDENCE.

To

THE EDITOR.

Official Receivers in the Moffusil.—One branch of the law requiring greater attention in a period of economic depression is the administration of the property of insolvent debtors. Never during the last quarter-century since the passing of the first Provincial Insolvency Act (III of 1907) was there so frequent a resort to the Insolvency Court as the last few months have been witnessing. Under the power vested in the Local Government by section 19 of that Act and the corresponding section 57 of Act V of 1920, Official Receivers are appointed in the Moffusil Districts, and the local limits of their jurisdiction extend throughout the areas under the respective District Judges. Though the High Court is empowered under section 79 (2) of Act V of 1920 (corresponding to section 51 of Act III of 1907) to provide rules for the appointment and remuneration of Receivers (other than Official Receivers) for carrying into effect the provisions of the Insolvency Act, instances do not seem to be in evidence of such Receivers having been appointed.

Under the English Bankruptcy Acts upon which the Indian Law of Insolvency is mainly modelled, each Court which has bankruptcy jurisdiction has attached to it *one or more* Official Receivers. *Cf.* (1883) 46 and 47 Vict., c. 52, Ss. 66 and 67. The number of such Receivers to be appointed will doubtless depend upon the extent of the business involved, and the requirements of efficient administration. It is conceivable, therefore, that when the first Provincial Act was passed, the Local Governments considered that the provision of one Official Receiver for the jurisdiction of each District Court would sufficiently meet the requirements of public service. Further, the enactment of the law for the first time in 1907 on a comprehensive basis would have been by way of an experimental measure, as the later modi-

fications in the Act of 1920 indicate, and the Official Receiver under the existing law is not only the Receiver for insolvent estates, but has the powers of an *interim* Receiver of properties belonging to persons whose insolvency is pending adjudication.

The duties of Official Receivers are manifold, and, it may further be added, are very taxing, if efficient discharge of such duties is to be expected. They relate both to the administration of the debtor's estate, whether before or after adjudication, as above stated, and also to the investigation of the conduct of the debtor who has come within the jurisdiction of the Bankruptcy Court. Such investigation into the conduct of persons coming within the Insolvency law will be facilitated if entrusted to Officers closer to hand than the single Official Receiver stationed at the District Court may reasonably be expected to make.

When one or more Subordinate Courts are functioning in each district with jurisdiction more or less co-ordinate in respect to the law of insolvency with the District Court, and the pressing need of the time is centering more upon the insolvency jurisdiction, it is time that the Local Governments consider the desirability of appointing Official Receivers for each of the areas under the jurisdiction of a Subordinate Judge. For the speedy disposal of judicial business, Government appoints additional Judges to the Subordinate Courts, but it is anomalous that so far as Official Receivers are concerned, not more than one for each district has so far been appointed, while, some cases, as, for instance, East and West Tanjore have both only one Official Receiver in common. Any attempt on the part of the Moffusil Courts to appoint Special Receivers is liable to question as was the case in *Official Receiver, Tanjore* v. *Nataraja Sastrigal*[1] and convenience or efficiency are removed out of the competency of the local Courts to judge, though "special reasons" within S. 57 (2) enable them to appoint special Receivers in extremely rare occasions.

The remuneration of Official Receivers depending upon the receipts obtained by them is no doubt a factor to be reckoned with, but judged by present conditions it should not be difficult to adjust the bankruptcy business so as to enhance the utility of appointing an Official Receiver for the local limits of the jurisdiction of every Subordinate Court in the Presidency.

M. V. V. K. RANGACHARI,
Cocanada.

1. (1922) I.L.R. 46 M. 405: 44 M.L.J. 251.

SUMMARY OF ENGLISH CASES.

PEECH *v.* BEST, (1931) 1 K.B. 1.

Grant—Exclusive right of sporting over farm—Covenant for quiet enjoyment of—Sale of part of land—Erection of building by purchaser—If infringes the sporting rights—Right of action.

An owner of a farm of 700 acres in extent granted to the plaintiff for a term "the exclusive right of shooting and sporting in over and upon . . . Hazeley Farm . . ." and the landlord defendant covenanted with the plaintiff that so long as the rent reserved was paid, the plaintiff shall have quiet enjoyment of the rights and privileges thereby demised without interruption. Later the defendant sold 12 acres out of the farm to a purchaser for building stables for race horses. The grantee of the *profit a prendre* objected to the erection of the buildings by the vendee. In an action for infringement of his rights against the landlord and the purchaser,

Held, that the building on the land would have entirely prevented the exercise of sporting rights over that particular part of the farm. Though the mere building of a stable might not have been, in itself, a breach of the plaintiff's rights under his lease, a complete ouster of the plaintiff from exercising his rights over a definite part of the land would be such a breach, as if threatened, would entitle him to an injunction, and he was, therefore, entitled to have damages granted in lieu of an injunction upon the hypothesis that, as no injunction was granted, the defendants would carry out their threat. It may be that a grant of sporting rights over land which had already been partly developed as building land would not prevent the owner from going on with his plans and building houses from time to time; but a lease of sporting rights over home farm lands stands on a different footing.

CARDIFF REVENUE OFFICER *v.* CARDIFF ASSESSMENT COMMITTEE, (1931) 1 K.B. 47.

Rates—Rating and Valuation (Apportionment) Act, 1928, *Ss.* 1, 3, 4—*Newspaper printing works and offices—Industrial hereditaments—Meaning of.*

The composing, printing and publishing of a newspaper is the making of an article and the adapting of an article for sale and that is done by way of trade or for purposes of gain and

that portion of the newspaper establishment is an industrial hereditament and non-textile factory within the meaning of Rating and Valuation (Apportionment) Act, 1928 and Factory and Workshop Act, 1901. It cannot be said that because the paper serves also for the dissemination of news, in other words, that the object is to provide food for the intellectual faculties of the readers of the newspaper, that its primary purpose is non-industrial.

Those portions of the premises which are not used in connection with the manufacturing process, but for the "editorial part" or managerial and clerical staff, advertisements, etc., which are purposes other than industrial, cannot be said to be industrial hereditaments. Therefore only those portions which were used for industrial purposes are entitled to be proportionately derated under the Act.

In re CARROLL, (1931) 1 K.B. 104: 100 L.J.K.B. 62.

Habeas corpus—Jurisdiction of Court of Appeal—Whether an appellant in Habeas corpus application can be directed to furnish security for costs.

E. C. unsuccessfully applied to Charles, J., in chambers for leave to issue a writ of habeas corpus to produce the body of her infant daughter. Then she applied to the Divisional Court. The respondent's costs in the first application had been taxed but were not paid and therefore they took out this application for security for costs. It was contended that she was applying for a writ of habeas corpus for her child, that she was entitled to make repeated applications for the writ of habeas corpus, that what is pending is not an appeal from the Divisional Court but is an application to the Court of Appeal under its original jurisdiction, and that being so, no order for security can be made.

Held, that the Court of Appeal is not a member of the High Court and that they were not sitting as members of the High Court to the Judges of which repeated applications for the issue of a writ of habeas corpus can be made. The matter was therefore only by way of appeal before the High Court. On the question of security, the mere fact that a person is in poor circumstances does not justify security being ordered where that person is making his first effort to obtain a decision. But Courts allow an impecunious person to get one bite of the cherry but will not allow him a second bite unless he, as appellant, is able to provide security for the costs of the appeal.

THE KING *v.* LAPWORTH, (1931) 1 K.B. 117: 100 L.J.K.B. 52.

Criminal Law—Evidence—Charge against husband of violence against the wife—Wife if a competent and compellable witness for the prosecution.

L was indicted by an indictment charging that he (*i*) attempted to strangle his wife with intent to murder her, and (*ii*) caused grievous bodily harm upon her. The wife was called as a witness by the prosecution but she said that she was unwilling to give evidence. The Judge thereupon compelled her to give evidence and convicted *L* on that.

Held, that the conviction was right. There is no doubt that at common law the husband or wife was always a competent witness in such a case, and by the very nature of things it must have been so, for otherwise, where the assault was committed in secret by one spouse upon the other, there would be no means of proving it. Once it is established that she is a competent witness, it follows that she is a compellable witness.

Leach v. *Rex,* (1912) A.C. 305, distinguished.

OAKLEY *v.* LYSTER, (1931) 1 K.B. 148.

Torts—Conversion—Goods of B *on* A's *land—Assertion by* A *of right to the goods—If conversion.*

A agreed to demolish an aerodrome and to reinstate the land on which it stood but as the pulling down involved the removal of 8,000 tons of hard core and tar macadam, which became *A's* property, he arranged with the tenant of a farm on the opposite side of the road for storing this on his land and dumped the stuff on that land. There were 4,000 tons of the stuff on the land. The defendant purchased the freehold of the farm and wrote to *A* stating that he had purchased the farm and the core stacked thereon and *A* should not therefore attempt to remove the core on the farm. *A* was lawfully in occupation of the land and was the owner of the core and tar but on account of the letter, he lost a purchaser who agreed to buy the whole coal and tar. In an action for damages for conversion, it was contended that *A* was always in possession and was never dispossessed and there was therefore no conversion.

Held, that it is not necessary now for conversion that there should be actual possession by the tortfeasor. Any dealing with goods in a manner inconsistent with the right of the true

owner amounts to a conversion, provided it is established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right. *Lancashire and Yorkshire Ry. Co.* v. *MacNicoll,* (1918) 88 L.J.K.B. 601, followed. *England* v. *Cowley,* (1873) L.R. 8 Ex. 126, distinguished.

SLINGSBY AND OTHERS *v.* WESTMINSTER BANK, LTD., (1931) 1 K.B. 173.

Banker—Warrant for interest on war stock—Crossed and marked "& Co. Not negotiable"—If a dividend warrant—If a cross cheque—Bills of Exchange Act, 1882, *Ss.* 82 *and* 95—*Liability of Banker.*

The plaintiff M.E.S., an executor of the will of H.T., received a warrant for 250*l.*, being half year's interest due on 10,000*l.*, 5*l.* per cent. war stock due to the deceased estate. The warrant was in the usual printed form of the Bank of England, crossed "& Co. Not negotiable," and contained a direction to the cashiers of the Bank of England to pay "to the order of M.E.S. (*sic.*) a|c H.T. dec., of Oxford Road, two hundred and fifty pounds." The payee M.E.S. duly signed the warrant and handed it to the solicitor acting in respect of the estate. *J,* a member of the solicitor firm, unlawfully and without the knowledge and authority of the plaintiffs, handed the said warrant to the defendant Bank with the request that the amount thereof should be credited to the private account of *J* in their Bank. The defendants in due course received payment and credited it to *J's* private account In an action for recovery of that sum from the defendant Bank. the claim was put variously as (*i*) money had and received, (*ii*) damages for conversion of the warrant or the proceeds thereof, and (*iii*) damages for negligence. The Bank manager had an interview with *J* when he asked an explanation for the warrant stating a|c H.T. deceased, but *J* said that M.E.S. preferred to hand over the warrant, because to have given her own cheque would have made it evident that she was probably receiving accommodation from her solicitors. The manager was satisfied with the answer and then acted as he did, especially as there was nothing in *J's* past record to arouse suspicion.

Held, the Bank was protected both under S. 95 as a dividend warrant and under S. 82 as a crossed cheque. It was a cheque, as it was an unconditional order drawn on a banker, payable on demand. The official of the Bank was in drawing

the cheque acting as the agent of the Government and not as a member of the Bank. The cheque was therefore not inter-departmental and so did not take it out of the category of a cheque. (*London City and Midland Bank* v. *Gordon*, (1903) A.C. 240, distinguished.) The cheque was crossed and therefore the banker having acted in good faith and without negligence in receiving payment of the cheque and crediting it to *J's* account, was protected under S. 82. Also, the war stock in question was issued under warrant pursuant to War Loan Act, 1916, to which National Debt Act, 1870, is made applicable. Dividend is there used to signify interest on Government stock and the warrant is therefore a dividend warrant within the meaning of S. 95 of the Bills of Exchange Act, 1882.

REX *v.* LONSDALE, (1931) 1 K.B. 191.

Criminal Law—Two or more accused—Joint trial—Joint trial for proof of habitual criminality also—If valid.

Three persons were charged for breaking and entering a shop with intent to steal to which they pleaded guilty. They were also charged with being habitual criminals to which all pleaded not guilty. Only one counsel represented them all. The three were tried together on the second charge at the suggestion of their counsel, who had then no idea that confusion would result from such trial.

Held, that no two persons should be tried together upon a charge of being habitual criminals. Where two or more persons are included in an indictment for a substantive offence followed by a charge against them as habitual criminals, each should be tried separately on this latter charge, especially where there is likelihood of confusion in identity, etc.

Rex v. *Blake*, (1910) 4 Cr. App. R. 275: 74 J.P. 336, re-established.

Rex v. *Taylor and Coney*, (1910) 5 Cr. App. R. 168. explained.

KENYON *v.* STREET, (1931) 1 K.B. 305.

Shops (Hours of Closing) Act, 1928*—Confectioners' shops—Earlier order prior to Act directing closing of shops earlier than* 8 P.M.*—Order if consistent with the provisions of* 1928 *Act—Conviction under earlier order—If valid.*

By an order made in 1918 under the provisions of the Shops Act, 1912, shops in Irlam were directed to be closed at 8 P.M. on Friday, 9 P.M. on Saturday and 7 P.M. on other days of the week. In 1928 the new Act was passed which laid down by S. 1 that "Every shop shall, save as otherwise provided by this Act, be closed . . . not later than 9 o'clock in the evening on one day in the week . . . and not later than 8 o'clock in the evening on any other day in the week . . ." Section 2 stated "Subject as hereinafter provided, as respects the trade or business of selling table waters, sweets, chocolates, or other sugar confectionery or ice cream, the general closing hours shall be 10 o'clock in the evening on the late day and 9-30 in the evening on any other day" and by the proviso to that section those traders cannot be ordered to close before 8 P.M. Therefore the Act of 1928 expressly took away the power of the local authority to make closure orders at earlier hours. Section 4 says: "Save as in this Act otherwise expressly provided, nothing in this Act shall affect (*a*) any closing order in force at the commencement of this Act, fixing closing hours earlier than the general closing hours fixed by or under the provisions of this Act" and it proceeds "Provided that any closing order, whether made before or after the commencement of this Act, shall be of no effect in so far as it authorises sales after the general closing hours fixed by or under the provisions of this Act, or contains provisions inconsistent with the provisions of this Act."

In a prosecution of a confectioner for selling toffee at 8-40 P.M. in contravention of the order of the Board, dated 1918,

Held, that the order inasmuch as it directed the closing of the confectioners' shops in the area at 7 P.M. was inconsistent with the Act and void under S. 4 proviso and as such the conviction was bad.

HARRIS *v.* HARRIS, (1931) P. 10.

Evidence—Admission to a solicitor by wife—Professional privilege—Admission made at an interview with her about contemplated proceedings for divorce—Solicitor acting for both—Husband and wife—Maintenance.

In defence to a claim made by a wife in a Court of Summary Jurisdiction for maintenance, the husband stated that she was guilty of adultery and admitted that before him. She denied that admission and the husband thereon called a local solicitor to speak to the admission. He had acted as their common

adviser in 1918. In 1919 when there was this delicate situation between the spouses, he saw them both in separate rooms and the admission is alleged to have then been made of the adultery on which the husband relies.

Held, the statement was privileged. The question is what is the relationship of the lay person and the professional man when the lay person confides in the professional man—whether it arises in a case of people who are on opposite sides; or whether it is merely a friendly relationship where, though there may be a breach of personal confidence, there is not a sealed privilege; or whether it is a relationship in which the solicitor is receiving the confidences of an actual or potential client and receiving those confidences under the seal of professional privilege.

STOKE-ON-TRENT REVENUE OFFICER *v.* STOKE-ON-TRENT ASSESSMENT COMMITTEE AND POTTERIES ELECTRIC TRACTION Co., 100 L.J.K.B. 1.

Rates and rating—Industrial hereditament—Elements to be proved by an applicant for derating.

The applicant for derating must show (1) a factory or workshop on some part at least of the hereditament, (2) he need not show that the primary purpose of the hereditament is a factory purpose but should show that the factory work done on the hereditament is so substantial, considering the area, value, and nature of the work done, and the number of people employed, that it cannot be said that the primary purpose of the hereditament is "non-factory." If the factory and non-factory purposes are nearly equally balanced, it is impossible to find one primary purpose. The hereditament is then industrial but there must be apportionment of the annual value of the hereditament under S. 4 of the Act between the industrial and the non-industrial portions of the premises.

In ascertaining the "primary purpose" of the occupation and use, it is the immediate and not the ulterior purpose of the business that is to be looked to under the Act, to determine whether it is industrial and whether in fact that portion of the premises is used for industrial purposes. The use and purpose must be limited to the area of the hereditament. It is not enough that a product made on the hereditament is to be sold or used for non-factory purpose off the hereditament.

Curtis v. *Skinner,* (1906) 95 L.T. 31: 22 T.L.R. 448, dissented from. Case-law and principles elaborately discussed.

The question whether sorting or separation of an article to be sold from a bulk is "adapting for sale" depends on the facts of each particular case. The original bulk may be such that it cannot be sold either legally, or commercially, (because an unsorted bulk is not wanted) and the process of sorting may be so complicated and mechanical as to deserve the title of a manufacturing process that is, of "adapting for sale." On the other hand, the bulk and the article to be sold may be so similar and of such a nature, that the separation or sorting may well be regarded as an entirely minor incident of the sale or distribution.

CARPENTER *v.* HAYMARKET HOTELS, 100 L.J.K.B. 33.

Negligence—Hotel-keeper—Guest—Diamond ring of guest —Loss of—Absence of negligence on guest's part—Liability of hotel-keeper—Notice of warning to guests—Effect of.

A lady and her husband booked a room at the defendant's hotel and went into the room. The plaintiff took out a diamond ring which she had been wearing, placed it in a jewel case, which she put into her suit case. She went out and returned to the bed-room for retiring. The plaintiff did not examine the ring before retiring but next morning she found it was missing and informed the proprietor-defendant about it immediately. There was a notice in the bed-room as well as in the hall of the hotel to the effect that the hotel would not be responsible for any property lost in the hotel and requesting the guests to deposit all articles of value at the office. It was found that the guest was not guilty of negligence and had not so acted as to show that she had retained to herself exclusive protection of her own property so as to relieve the hotel-keeper of liability in that respect.

Held, that the defendant was liable in damages to the extent fixed by the Innkeepers' Liability Act, 1863. "The innkeeper is an insurer of the goods of the guests which are brought to the hotel. He is relieved from the liabilities attaching to that position if the loss is occasioned by the negligence of the guest himself or herself. He is also relieved from the liability as an insurer if a guest so conducts himself in relation to his goods as to show that he has relieved the innkeepers from responsibility for their protection and has undertaken the protection himself."

Jones v. *Jackson,* (1873) 29 L.T. 399, distinguished.

R. *v.* CORRIGAN, 100 L.J.K.B. 55.

Extradition—Criminal Law—Extradited person whether triable only for offences for which extradited—Treaty between Great Britain and France—Onus of proving extradition.

The accused was arrested in Paris on a warrant issued by a Magistrate in Great Britain on charges of obtaining sums of money by false pretences and brought before a French Court. The accused made five appearances there and was then sent in custody to Boulogne where he was handed over to a British Police Officer. The French Government wrote to the British Government stating that the accused consented to be sent back without the fulfilment or accomplishment of the formalities of extradition. He was tried on the same facts as those contained in the informations on which the warrants for the arrest of the accused were granted, but convicted not for obtaining money by false pretences but for fraudulent conversion.

By S. 19 of the Extradition Act of 1870 "Where, in pursuance of any arrangement with a foreign State, any person accused or convicted of any crime which, if committed in England, would be one of the crimes described in the first schedule to this Act is surrendered by that foreign State, such person shall not, until he has been restored or had an opportunity of returning to such foreign State, be triable or tried for any offence committed prior to the surrender in any part of Her Majesty's dominions other than such of the said crimes as may be proved by the facts on which the surrender is grounded"; and by Art. 4 of the Treaty Act of 1876, "a person surrendered shall not be tried for any crime or offence committed in the other country before the extradition, other than the crime for which his surrender has been granted."

Held, S. 19 of Act of 1870 is not repealed by Art. 4 of the treaty between England and France and therefore the conviction for fraudulent conversion on the facts contained in the information and depositions was valid. The onus of proving that extradition proceedings were taken against the accused and that he was surrendered under the Extradition Law is upon the accused. In the absence of evidence of such surrender, the finding that he returned voluntarily although in custody is correct, and he must face in this country any charges made against him.

WILLIAM LEITCH & CO. *v.* LEYDON. A. G. BARR & CO. *v.* MACGEOGHEGAN, 100 L.J.P.C. 10.

Torts—Trespass—Goods—Bottles of A—Given to B his customers for use and return—B taking it to C for filling up aerated waters—Property continuing in A—If C can be restrained by injunction from filling it up.

The appellant company were manufacturers of aerated waters, which they sell to traders and others in bottles and syphons, the terms of the sale being that the property in the bottles and syphons remains with the appellants, to whom their customers are bound to restore them. The customers leave a deposit with the appellants to ensure their return. The purchasers of these bottles, having emptied them of their original contents, seek to have them refilled, which they can do by a simple process at the shop of any one who possesses a soda machine similar to the one possessed by the respondent. When these bottles are so taken to them, the respondents fill up the bottles for their customers, without looking at the bottle to see the name of the appellant company is embossed on it. The appellant company seeks to restrain the respondents from filling up their bottles with aerated water at their "Vantas" fountain, on the ground that the bottles are their property. Notices are given to their immediate customers by the appellant company that the property in the bottles continues with them.

Held, that assuming that the appellants can claim from any purchaser of the bottle the restoration of the bottle and forbid him using it for any purpose at all, it still does not follow that they are entitled to obtain the injunction they seek against the respondent. The respondent does no more than fill whatever receptacle is offered to him. It may be that the person presenting may be, to the respondent's knowledge, under contractual obligation to the appellant either as to its return or its use, but to that contract the respondent is not a party and it is a novelty to say that *A* can be compelled by law to do or refrain from doing something lawful in itself and that to his own prejudice, in order to help *B* to enforce his contract with *C*. The member of the public who produces the bottle is in lawful possession of the bottle and remains in such possession notwithstanding that for the purpose of filling up he temporarily transfers the manual custody to the respondent.

JOTTINGS AND CUTTINGS.

The Judicial Committee and Extradition Cases.—The Judicial Committee has laid down repeatedly and emphatically that it will not interfere with the judgment of a Colonial Court in a criminal case unless it is satisfied that there was something in the proceedings which deprives the accused of the substance of a fair trial, and causes substantial and grave injustice. That principle was affirmed last year in the case of *Knowles* v. *The King,* when it granted leave to appeal; and in a series of applications from the Palestine Courts in connection with the riots of August, 1929, when it refused leave to appeal. It is striking, therefore, that the Committee granted leave to appeal recently from an order of the Supreme Court of Trinidad in *Habeas Corpus* proceedings which were brought to test the validity of the extradition of certain prisoners who had escaped from the French Penal Settlement of Cayenne, commonly known as Devil's Island: *Kossekechatko and others* v. *Attorney-General for Trinidad,* (Times, 24th ultimo). Their order indicates that a *prima facie* case of grave injustice or lack of jurisdiction has been made out, which will have to be argued on the substantive appeal. It is very rare for them to give leave in extradition cases, though in 1923 they granted an application in a case which raised the question of the nationality of the inhabitants of Palestine: *Goralschvili* v. *Attorney-General for Palestine.* But the governing principles are the same as those laid down for criminal appeals. In the present case the main ground put forward by the petitioners was that the Magistrate in Trinidad had no evidence before him that the crimes for which they were convicted in France were committed in French Territory, while the Anglo-French extradition treaty provides for the surrender of persons convicted of crimes committed in the territory of the other party. It was urged also that the request for their extradition had not been made within 14 days of their arrest in Trinidad, as required by the Treaty, and that the warrant of commitment was altogether bad in form. The grant of the application will involve further examination by the Committee of the Principles of Extradition Law, which have recently been elucidated by the High Court in the *Corrigan* case.—*L.J.,* 1931, p. 92.

Lawyers and the New Thing.—Sir John Withers' views on the reluctance of the solicitors (as a body) to initiate constructive measures of reform might have been extended to

other branches of the profession. With barristers and judges, as with solicitors, what was good enough for their fathers has (generally) been good enough for them. When old-fashioned lawyers awoke to the fact that plaintiffs and defendants were to be allowed to give evidence on their own behalf, they were filled with apprehension and alarm. And when the Prisoners' Counsel Bill was being discussed in the House of Commons, Park, J., was so disgusted with its provisions that he wrote to the Attorney-General, Sir John Campbell, threatening that if the measure were passed he would immediately resign. Something must have occurred to change his views, for the Bill was passed and the stern resolve was not fulfilled. Park, J., carried on until he died in harness in 1838.

Lord Campbell, in his diary, expresses the opinion that Bills for abolishing the Star Chamber, for prohibiting torture, or for allowing the prisoner's witnesses to be examined on oath, would all have been strenuously opposed by Lords Eldon, Redesdale and Tenterden. Twelve of the fifteen Judges in 1837 were against the Prisoners' Counsel Bill.—*L.J.*, 1931, p. 103.

Law and the University.—In referring recently (*ante*, p. 91) to an interesting judgment of Chief Judge Cardozo of New York as to the liability of accountants, we omitted to notice that upon him fell the duty of delivering the address last September when the honorary degree of LL.D. was conferred by Columbia University on Lord Dunedin and other distinguished lawyers, and his address is printed in the current number of the *Law Quarterly Review*. Whether it is true, as he said, that the function of a University is to treat law imaginatively, we are not sure, though it suggests a pleasing distinction between the class-room, and the drier atmosphere of office or chambers and the Courts, where the student will have to reduce imagination to practise. But the Chief Judge paid a welcome compliment to the merits of English judgments. "What a faculty they show for using the right word, for bringing the law down to earth by clothing its mysterious precepts in the garb of homely truths." And to continue the quotation:

> "Even our tariff walls have left a gap for the importation of these luxuries of foreign make, and this though there has been some departure on the other side from the rule of reciprocity. Citation of our precedents, though not forbidden in the English Courts, is still, if I mistake not, a practice gently frowned upon, or at least not noticeably encouraged."

Probably this reproof, so gracefully put, does represent the tendency of the Courts here as regards citation of American

decisions; but this is due to the enormous growth of the volume of judicial precedents—in the United States on a scale still greater than here—rather than to any failure to appreciate their value. And when occasion arises, the decisions of the American Courts are cited and are welcomed as having a strong persuasive force, though not actually binding as precedents. But though it is not practicable to make use of all the available material, yet, as Chief Judge Cardozo said, this judicial making of law forms a bond between American and British lawyers, and he discerns a similar development in French and German jurisprudence.—*L.J.*, 1931, p. 128.

Audi Alteram Partem.—Lawyers must have rubbed their eyes in some amazement when they read the report of the hearing of an application in the Court of Appeal on Monday in *Re the Application of Nicholson and Sons, Ltd.* (*Times*, February 17). Messrs. Nicholson had succeeded, in the course of prolonged litigation between themselves and Bass, Ratcliff and Gretton, Ltd., in establishing their right to the registration of a black and white triangle as a trade mark; but Bass and Co. were given liberty to apply that registration of Nicholson's mark should only be allowed with certain restrictions. This application came before the Court of Appeal last Monday, when counsel for Bass and Co., asked that the use of Nicholson's mark should be restricted to beer sold in barrels. The application was dismissed without counsel for Messrs. Nicholson being called on to argue. There is, of course, nothing remarkable in that fact by itself; it happens almost every day. But what appears to us to be unusual is that the Court was not unanimous on the point, and that the Master of the Rolls, who dissented from the opinion of his colleagues, delivered a judgment in favour of Bass & Co. in spite of the fact the Nicholson & Sons' counsel had not been heard. Since the majority of the Court was of the opinion that the application ought to fail, the result of the case was not affected, but that does not alter the fact that, as the case is reported, a judicial opinion was expressed in favour of one of two litigants without the contentions of the other having been heard. With the greatest respect, we express the hope that this precedent will not be followed.—*L.J.*, 1931, p. 128.

The Pursuit of Health.—It so happened that the visit of the British Medical Association to America coincided with the visit of the British lawyers, and from one of the addresses, of

which a reprint is before us, we rather imagine that the doctors had even a better time than the lawyers. It was delivered by Dr. Robert Hutchinson, a well-known London Physician, at the combined meetings of the British and Canadian Medical Associations at Winnipeg on August 27, and professed to be "popular;" so perhaps it is hardly a sample of the discourses which formed the staple entertainment. Indeed, it is so popular that its appeal is no less to lawyers and to people generally than to their medical advisers. It sorted out the various forms of hypochrondriasis—individual, vicarious, and national. Dr. Hutchinson does not believe in any of them—over-care as to one's own health, the family health, or the national health—but is all for natural living. Scientific living is, it seems, carried so far that in some American restaurants the caloric value of each dish is entered on the menu. And when people are tired of calories, they are crazy about vitamins or about "roughage." But for Dr. Hutchinson the scientific truth about all this diet business is "Eat moderately, take an ordinary mixed diet, and don't worry about anything else." Another form of individual hypochondriasis, he says, is found in the physical fitness people. "They are the sort of people who do physical jerks to wireless accompaniment," but Dr. Hutchinson quotes "your Canadian humorist," Prof. Leacock, as saying that after all their fears about diet and exercise, "they presently incur some simple old-fashioned illness and die like anybody else." And Dr. Hutchinson is equally critical of fussiness about the health of others, and fussiness about the health of the community. But we have already wandered from our province. It is true, he concludes, "in the bodily, as well as in the spiritual sphere, that he that will save his life shall lose it." Canada is a large country, and no doubt the British lawyers did not know what was going on among the doctors at Winnipeg. In missing Dr. Hutchinson's "Pursuit of Health," they missed a good thing.—*L.J.*, 1931, p. 129.

New Silks.—Mr. Bhugwandin Dube who was called to the Bar at Middle Temple, on July 1, 1908, has practised almost exclusively in the Privy Council in Indian Appeals; and the Lords of Appeal, who know him well, did not fail, through the mouth of Lord Macmillan, to express their pleasure at his promotion. Apparently a unique distinction, since, according to Lord Dunedin, Mr. Dube is the first and only Indian to receive the honour of a silk gown.

Apart from him, this batch of eleven silks is free from thrills, and not one name can be regarded as a "household word," even in the limited families of the lawyers. Messrs. Bucknill, Trapnell and Turner have been fairly busy as juniors, and have reasonable expectations of substantial employment within the Bar. It is thought that Mr. Turner may succeed to much of the work released by Mr. Rowand Harker's withdrawal from the Parliamentary Bar; Mr. Inman, in building contract cases, may inherit much of the extensive practice of the late A. A. Hudson, K.C.; while Mr. Daynes, of the Chancery Bar, one of the best and busiest juniors on that side, is regarded as certain to secure full-time continuous employment as a silk.—*L.J.*, 1931, p. 136.

Applying for Silk.—I have heard much adverse criticism, spoken in the Temple during the past week, concerning that ancient and now undesirable practice which requires a junior, when he is about to apply to the Lord Chancellor for silk, to notify all those on his circuit who were called to the Bar before him. Some years ago standing and respectability were all that were deemed to be necessary to ensure that a request for silk would be granted almost as a matter of course; but for some time this has not been so; and of late one has to indulge in wild surmise to find a reason for the fact that, while many apply, a few are not chosen.

Twenty-five years ago there was much grumbling because of surprising omissions from the successful list; when men not only of sufficient age and unblemished reputation, but of large practice, were passed over. As a result of the practice aforesaid every one knew they had sought silk but had not found it; and that their reasonabe request had become painful by this publicity.

It is not beyond the wit of lawyers to devise some means whereby the intentions of the Lord Chancellor could be ascertained, in the event of an application by a particular person.—*L.J.*, 1931, p. 153.

When few were chosen.—A century ago the honour of a silk gown was sparingly and often grudgingly granted. In the early part of the nineteenth century the leaders of the Bar were few in number, a select body, into which it was extremely difficult to gain admittance. However distinguished a junior might be, however large his practice, if he did not see eye to

eye with the reigning Lord Chancellor, his chances of selection were exceeding small. Sometimes even higher influences were at work against him. A classical quotation wherewith Denman embellished his speech at the Queen's trial, aroused such anger in the breast of King George IV that it needed all the persistence of the Iron Duke to secure a patent of precedence for the future Lord Chief Justice in the year 1829. The Duke afterwards declared with a characteristic oath that "it was the toughest job he had ever had."

And the great Campbell applied for silk in vain to Lord Eldon in 1819. He had to wait for eight years before Lord Lyndhurst took pity on him and called him within the Bar.

Times changed. Lord Halsbury, when his Government went out of office in 1906, had created, during his times as Chancellor, more than two hundred silks.—*L.J.*, 1931, p. 153.

Police Work as a Profession.—Each year for several years, Sir Leonard Dunning, in his annual report as one of H. M. Inspectors of Constabulary, has condemned in no uncertain terms the practice of "tipping" members of police forces not only as being harmful in itself, but as being degrading to a body of men, each of whom has the opportunity, and should have the desire, of raising to a position of high responsibility in the force; and in his report for the year ending September, 1930, he not unnaturally makes the suggestion of a Police College, at which training for the higher ranks of the service would be systematised somewhat on the lines of the Staff College for the Army, a peg on which to hang his familiar argument. We entirely share Sir Leonard's views as to the undesirability of "tipping" the police; but the practice will only be stopped by the refusal of members of the force to accept gratuities, for the habit of rewarding in this way small personal services, such as the police constantly render, has become ingrained in the public, and only the knowledge that the offer of a tip will be regarded as an indignity will put an end to the practice. Major-General Atcherley, the other Inspector of Constabulary, calls attention to the fact that the constantly increasing requirements of police for traffic control adversely affects the numbers available for patrol duty, and he has the impression that the cumulative effects of present-day demands on the police are beginning adversely to affect efficiency. There seems to be little likelihood that the number of police required for traffic control purposes will become less in the near future, although automatic traffic signals may do something in this

direction; and the various establishments should be revised to ensure that a sufficient number of men are available for patrol duty. It is, perhaps, a tribute to the law-abiding instincts of the citizens of this country that the present strength of the police for a population of thirty-eight millions is under 58,000.—*L.J.*, 1931, p. 160.

The Malta Royal Commission.—The Royal Commission which is to visit Malta and report on its political affairs will have an interesting, and difficult, task to discharge. The main object of the visit is to discuss and suggest ways and means for the restoration of the Constitution of 1921, which has been in abeyance for some nine months. The friends of constitutional government (amongst which lawyers are, as a whole, to be found) must hope that the Commission will find the correct solution. It is impossible, in view of the known facts, that the spirtitual guides and advisers of a devout race should exercise no influence in public affairs, and the difficulty will be to devise a means by which, consistently with that influence, electors may be "free and independent." On one point lawyers may insist, namely, that the Courts must be inviolable in the exercise of their proper jurisdiction. The final collapse last year was precipitated by the issue of an Ordinance depriving them of that jurisdiction. This Ordinance the Court of Appeal ignored—only to find itself overruled by the strong hand of the Secretary of State. The spectacle was shocking to the legal mind; and, indeed, it may be said that no form of democracy can subsist unless the independence of the Judges enjoys absolute protection. The solution of the problem must now await the report of the Commission. The delay is to be regretted, but, in the circumstances, is inevitable.—*L.J.*, 1931, p. 161.

Murderers as Beneficiaries.—A somewhat singular question of the application of the rule that a person who commits murder cannot take a benefit under the will of the murdered person came before Mr. Justice Farwell in *Re Pitts*: *Cox* v. *Kilsby*, (*Times*, February 26); but on the facts found by the learned Judge it did not become necessary expressly to decide it. A husband shot his wife and infant child and committed suicide. The wife died intestate, and the question of fact was as to whether at the time of the commission of the act of murder he was insane or not. The coroner's jury had found that the husband murdered his wife and child, and that he committed suicide whilst of unsound mind. They do not appear to have

expressly found that he was insane at the time of the murders, and it is, of course, possible that a sane man might commit murder and, being overcome by horror at his deed, become insane and commit suicide. But, having regard to *Bird* v. *Keep*, (1918) 2 K.B. 692, the verdict of the coroner's jury was not evidence in the case before Mr. Justice Farwell, and he heard evidence on the question of sanity, coming to the conclusion that the husband was insane when he committed the murders. That being so, he was not a murderer, for the purpose of the rule which prohibits a murderer from taking under the will of the person murdered, and the question of whether it applied to a case in which the murdered person died intestate did not arise, though the learned Judge thought, without deciding the point, that it would. In the result, the husband's estate was entitled to the share of a surviving spouse under the Administration of Estates Act, 1925, and also, since the presumption was that the child survived the mother, to the estate of the child.—*L.J.*, 1931, p. 161.

Judicial Salaries in Belfast and Dublin.—If merit has been measured in sterling, it would appear that, man for man, the Judges of Belfast are better than their Dublin counterparts. Moore, L.C.J., of Northern Ireland, is rewarded by a salary of 5,000*l* a year; Kennedy, C.J., of the Irish Free State, receives a beggarly 4,000*l*; Andrews and Best, L.J J., are valued at 4,000*l*. yearly; President Sullivan, and the Judges of the Supreme Court, the Honourable FitzGibbon and Murnaghan, whose duties correspond to those of the L.J.J. aforesaid, are mere 3,000*l*. men; while the "puisnes," the Honourables Creed Meredith, Wylie, Johnston, Hanna and O'Byrne, of the Cuist Oachtarach, receive each no more than 2,500*l*. a year. Their counterparts in Northern Ireland, Wilson and Brown, JJ., are paid a thousand more.

The cause of the discrepancies may be other than mere merit. My suggestion for the increasing of peace and harmony throughout Ireland is that Dublin should follow, nay, should excel Belfast; but may be the Free State cannot, or will not, rise to it.—*L.J.*, 1931, p. 175.

Two Unwanted Institutions.—In vain did England try in 1873 and after to effect a merger of common law and equity; they refused to merge; and so in London there are six specialists in continuous session (barring illness) in the Courts of

Chancery; a crowd of Barristers, conveyancers, and equity specialists congregated in one of the inns, namely, Lincoln's Inn. Our County Court judges have, within their limited jurisdiction, to decide questions of law and equity. But in England there are the judgments of the specialists for guidance, and an appeal to a Court where a Chancery Judge is almost sure to be on the Bench.

In Northern Ireland, as in the Dominions, the same High Court Judges deal with every branch of the law, and neither there nor elsewhere throughout the British Commonwealth of Nations is there any loud demand for Courts of Chancery on the Fleet Street model.—*L.J.*, 1931, p. 175.

University Representation.—Without going too far into politics, we may express our satisfaction that the House of Commons has rejected the clause in the representation of the People Bill which would have abolished the representation of the Universities. It may be difficult to estimate exactly the beneficial effect of such representation on the House of Commons, just as it is difficult to estimate exactly the effect of other elements in popular representation. But in no department of social life is a dead level of uniformity desirable, and if only in a small degree, university representation breaks the uniformity of electoral areas. This, of course, in itself is not a sufficient argument; the uniformity must be broken in the right direction. University representation answers this test. Whether or not the University vote has always selected the best men, and even if it has been mainly exercised in favour of one political party, at least it forms a bond between Parliament, where the practical conduct of the affairs of the nation is centred, and the institutions which are dedicated to the encouragement and pursuit of learning. As we have said, the direct influence of the University members in Parliament may not be great, but they form a very useful element in that assembly, with special knowledge available on matters relating to education, and their presence is a reminder that the Universities, as much as the great agricultural and industrial areas, are an essential part of the Commonwealth.—*L.J.*, 1931, p. 195.

Donations Mortis Causa.—Donations *mortis causa,* said Lord Hardwicke in *Ward* v. *Turner,* (2 Ves. section 431), "are undoubtedly taken from the civil law; but not to be allowed of here farther than the civil law on that head has been received and allowed." But though such is the origin of these

gifts, the conditions under which they will be effective have long been settled in English law. They are, that the gift must be made in contemplation of death; it must be intended to be absolute only in case of death; that is, the thing is to revert to the donor should he recover; and there must be delivery of the subject-matter of the gift. Questions have usually arisen with regard to the sufficiency of delivery, as in the case of a cheque which has not been presented and honoured in the donor's lifetime, such a gift being void: *Re, Swinburne,* (1926) Ch. 38: 95 L.J. Ch. 104; or of a parcel of bonds deposited in a box at a bank; in this case, the delivery of the key with a list of the bonds was sufficient: *Re Wasserberg,* (1915) 1 Ch. 195: 84 L.J. Ch. 214. In *Wilkes* v. *Allinson,* (1931) W.N. 76, before Lord Tomlin, the question arose as to the correctness of a statement in *Williams on Executors,* (12th Edn., p. 479), that the gift must be conditioned to take effect only on the death of the donor from his existing disorder. The donor was suffering from a disease which he knew must before long terminate fatally, but in fact he caught a chill and died from pneumonia. Lord Tomlin held the statement to be incorrect. It was enough that the gift was made in contemplation of death, without regard to the way in which death actually occurred.—*L.J.,* 1931, p. 197.

A Screen of Oblivion.—As we go to press we note the decision of the President on a motion to strike out such paragraphs in a husband respondent's answer to his wife's petition as alleged misconduct before the date of a separation deed between the parties. The husband alleged that he had been ignorant of such misconduct. The deed contained a clause commonly known as a *"Rose* v. *Rose clause,"* which, *inter alia,* purports to condone all antecedent offences and provides that if either party shall commence proceedings against the other in respect of any subsequent cause of complaint no offence or misconduct committed before the date of the deed "shall be pleaded or alleged by either party or be admissible in evidence." The deed was dated the 15th November, 1929, and on the 13th August, 1930 the wife instituted proceedings for divorce based on allegations of adultery on two days in August at the Savoy Hotel with a named woman. The woman put in no defence, but on the 6th November, 1930 the husband put in a defence consisting of a denial and an allegation that the petitioner had committed adultery before the date of the deed with a man who had since died. Counsel for the husband urged that the clause

in question was against public policy, as it would enable parties who had led profligate lives and desired a collusive divorce to set up a "screen of oblivion" and next day the husband could go to an hotel and commit adultery on which the wife could found her petition.—*L.T.*, 1931, p. 134.

The Decision.—The President, in giving judgment, said that the matter had been fully argued, but as he had formed a definite view he would give judgment at once. The real question was whether, assuming their intentions were honest, the deed was binding on the parties. It was contended on behalf of the respondent that the clause was against public policy as the jurisdiction in divorce was not exercised simply between suitors but involved questions of public policy. It was not disputed that *Rose* v. *Rose*—a decision of the Court of Appeal—was in point, but it was said that in that case the question of public policy was not raised. In *Rowley* v. *Rowley*, in which there was an attempt to go behind an agreement of oblivion, the House of Lords affirmed the decision that the agreement furnished an absolute bar to the allegation of matters arising before its date. In that case, too, it was said that the question of public policy had not been raised, but Lord Penzance in his judgment dealt with the question. The proposition that parties could not lawfully enter into such an agreement because if one began proceedings for a divorce the other was under a duty to put before the Court all facts relative to the proper exercise of its discretion was a very large one. It would render impossible all attempts at reconciliation, as no reconciliation could be final. The difficulty was said to arise by reason of the proviso to sub-S. (3) of S. 178 of the Supreme Court of Judicature (Consolidation) Act 1925, which provided that the Court should not be bound to pronounce a decree of divorce if it found that the petitioner had during the marriage been guilty of adultery. No one was bound to petition for divorce. Had one who became a party to divorce proceedings a duty laid which would make this deed invalid? The only ground for holding the deed void would be that it embodied a scheme to deceive the Court, and looking at the agreement and assuming that the parties were desirous not of deceiving the Court, but of regulating their lives by its terms, was it void because it might be used as a cloak of evil? In his view the agreement was perfectly good, and the authorities of the last fifty years supported that view.—*L.T.*, 1931, p. 134.

Legal Families.—In the sketch of Chief Baron Pollock in the late Mr. Edward Manson's Builders of the Law, it is said that "the Pollocks are the *Mucian gens* of England, a race of hereditary lawyers. Law is in their blood, like literature in that of the Coleridges, politics of the Pitts, music of the Mendelssohns." True, the Pollocks have been represented on the bench by three generations although not in a direct line, but their record has been beaten by the Coleridges, of whom three in a direct line reached the bench of the Supreme Court. A parallel to this was seen in Scotland where three generations of the Moncreiff family were judges of the Court of Session. A more curious instance of relations occupying the judicial seat is recalled by a letter in *The Times* last week, where it is pointed out that about the middle of the nineteenth century there were on the bench of the Court of Session at the same time three brothers-in-law, namely, Lord Fullerton, Lord Cockburn, and Lord Dundrennan, who were married to three sisters. When the third of the three took his seat Lord Cockburn noted the fact in his Journal, and, after mentioning the circumstances that Dundrennan was the third brother-in-law to be promoted, expressed the hope that he would be "the last who will have the infirmity of changing his own name (which was Thomas Maitland) and taking that of his clods on mounting the judgment seat." The hope thus expressed has not been realised, for several of the present judges of the Court of Session continue the old tradition of taking for judicial purposes a territorial title.

In England, so far as the present writer can recall, there has been no exact parallel to the Scottish instance of three judges on the bench at the same time all having married sisters and thus making quite a family party, but we have got very near it. The present Lord Russell of Killowen and Lord Justice Romer married sisters, while Mr. Justice Maugham married a sister of Lord Justice Romer, so that the latter can say that he has two brothers-in-law on the bench with him.—*L.T.*, 1931, p. 148.

Index Oddities.—Every lawyer realises the value of a good index; indeed, without one his labour in consulting his books is multiplied a hundredfold. Little, however, does he realise that indexing is something of an art and that it cannot be devolved upon any one with success. Too often is this forgotten with disastrous results. Occasionally, it is true, the indexer gives play to his sense of humour to the delectation of the

judicious but to the perturbation of those with no perception of the ludicrous. Thus, in some of the earlier editions of Smith's Leading Cases a humorist was obviously at work, for there we find such entries as: "Hawk's Eyes, Court will not always look with"; and "Hull, J., swore on the bench." But in the majority of cases it is to be feared that the humour is altogether unconscious on the part of the indexer as it was with Sir Gregory Lewin, who plentifully sprinkled the index of his reports of Crown cases with such entries as these: "Backway —a person attacked ought to escape by, if he knows it"; "Lifting up—a bag from the boot of a coach is an asportation"; "Labour—medical man neglecting a woman in, is manslaughter"; "Slinging a cask negligently—manslaughter." Occasionally an error in punctuation turns an entry into something very different from what was intended. Of this a striking example is furnished by the index to the life of the late Lord Gorell, where the reader may find this: "Gladstone, speech on divorce of." The entry would have been in accordance with the subject-matter in the text if a comma had been placed after the word "divorce" and would have avoided an awkward ambiguity. Another recent legal biography, that of Lord James of Hereford, has a curious and amusing entry in the index. Under the heading "James, Henry, Lord, of Hereford," we find a brief notice of the leading incidents of his career, and among them may be noticed the following: "Attacks Gladstone 216-17; Attacks of gout 217-18." The collocation of the two kinds of attack is piquant.—*L.T.*, 1931, p. 148.

Divorce Witnesses.—Another expression of opinion in favour of simplification of legal procedure has come recently from Mr. Justice McCardie, who had before him at the Sussex Assizes last week a number of undefended divorce cases for each of which several witnesses had been called. If he is reported correctly the learned Judge took occasion to regret "the perfectly appalling waste of time and money involved in calling witnesses from the north, south, east and west of England to prove facts about which there was not the faintest measure of dispute," and suggested that they could have been proved by affidavits without the slightest difficulty. His Lordship is then reported as saying that in his view the laws of England with respect to evidence were old-fashioned and out-of-date and the time was coming when they must be amended. It is true that divorce petitions consume a great deal of the time of Judges both

in London and on assize, and it is true also that much of the work on the undefended list is more or less of a routine character. It is not overlooked that a distinction was drawn by Mr. Justice McCardie between the presence of the petitioner and that of the witnesses, but even so, we are not, with all due respect, altogether convinced that undefended divorce causes, with their admitted proportion of "arranged" suits, afford as strong an argument for the substitution of affidavit evidence as some others where the issues are less important socially. For similar reasons we are not in agreement with the suggestion, more than once put forward, that undefended divorce should be handed over to a registrar or other experienced official, for that way lies an invitation to perfunctoriness and that disregard for truth of which His Lordship so bitterly complains. That divorce should be easy in the sense of not being inaccessible is right; that it should be informal seems undesirable.—*L.T.*, 1931, p. 242.

A Company Wholly "Held."—Sixty or seventy years ago, the notion that one company could or should be a shareholder in another was something of a novelty, and it was actually argued in Re *Barned's Banking Co.*, (1867) L.R. 3 Ch. 105, that for one company to invest in the shares of another was *ultra vires*. Lord Cairns, however, observed (p. 113) that he knew of no reason at common law why one corporate body should not become a member of another, and held that the Companies Act, 1862, in fact, permitted such a relation in the case of limited companies. Since then, of course, the practice of one company holding shares in another has enormously increased, and "holding companies" have been created for this express purpose. The question of the legal position when one company holds every single share of another may thus be of practical interest. The latter company then has only one member within section 25 of the Companies Act, 1929, and to say that in such circumstances the prescribed annual general "meeting" can be held is somewhat a strain of language, for section 116 (1) (*a*) allows only one person to represent a company. The point is discussed in *East* v. *Bennett Brothers, Ltd.*, (1911) 1 Ch. 163, where the memorandum and articles required meetings of preference shareholders, and one person held all the shares of that class. Warrington, J., decided that the situation was within the constitution of the company, and, if that one person signified his wishes in the proper formal manner, he could "meet" within the articles to do so. It is perhaps unnecessary to add

that these articles did not require a quorum at such a meeting. The position when an individual or a company holds all of one particular class of shares may, however, be distinguished from that when all of every class of share are so held, either by an individual or another company. In each case the company so held could be wound up on an application under section 168 (3) of the Act, and, if the holder was a single individual, probably would be. If the holder was a company, it might be submitted that the case was not within the mischief of the implied prohibition on single ownership—a prohibition which, even in the case of an individual owner, has been much more a matter of form than substance since the *Solomon Case,* (1897) A.C. 22. On the whole, it would probably be better, if only out of respect to the law as framed, for nominees to hold sufficient shares to form a quorum and comply with the Act. The intelligent student might perhaps exercise himself with the problem of what would happen if *A* company held all *B* company's shares and *vice versa,* or *A* held *B's, B* held *C's,* and *C* held *A's.* It would be something like the snakes all eating each other's tails. The one certainty would be that, given such a situation, various company promoters could, under the old law, have framed plausible balance sheets to show that each of a number of insolvent companies was worth millions. Whether sections 125-127 of the new Act will now prevent such artifices remains to be seen.—*S.J.,* 1931, p. 106.

Violence in Court.—Few of us, in our most uncontrolled moments, would be courageously indiscreet enough, even under great provocation, to shatter by physical violence that peculiarly unruffled atmosphere which invariably characterises our civil and criminal Courts. The customary quiet dignity of the proceedings, in association with the invisible but iron hand of power that lies beneath, rarely fails to exercise a salutary, restraining influence over the most hardened offender or the most bumptious litigant. Tense, conflicting emotions there must be in this school where most of the passions with which humanity is afflicted are exposed, but seldom does anger rise to such a pitch that actual physical violence is directed to the Judge or other officer of the Court. This country, perhaps more than any other, although by no means completely exempt, has been remarkably free from this unpleasant class of outrage. By a Home Office Order, rigorously enforced, all prisoners are now thoroughly searched before being placed in the dock. This obviously necessary precaution, which began twenty-five years

ago, resulted from a prisoner in the Crown Court at Leeds hurling a bottle at the Recorder, who narrowly escaped serious injury. By a remarkable coincidence the same man was again sentenced recently in the same Court, and on this occasion he was strongly guarded in the dock by four warders. Judge Cluer, not long ago, sent to prison for seven days a witness who, it was alleged, had struck an usher on the face; while from Brighton comes the case of a man kicking another who had given evidence against him. These comparatively trivial offences are merely petty, though none the less objectionable exhibitions of temper which ought to be controlled, but cause no particular harm except, perhaps, to the perpetrators, who thereby expose themselves to the penalties for contempt of Court. Far more serious was the attempt by a lunatic to shoot Sir George Jessel; luckily, he missed. Then there was the ink-stand hurled from the dock at a Recorder, Sir Arthur Collins, who had just sentenced a burly ruffian to seven years' penal servitude; happily, that too missed its mark. "That must have been meant for my brother Bacon," said Vice-Chancellor Mallins, humorously, on one occasion, when a none too excellent egg just missed him and besmeared the judicial bench. The whole basis of the Court's refusal to tolerate an act of physical violence or other attempt at revenge or intimidation is, of course, to ensure that there is no interference in any way with the due administration of justice. "It is on that ground, and that alone," said one Judge towards the end of last century, " and not on any exaggerated notion of the dignity of individuals that insults to judges, witnesses or jurymen are not allowed." The most recent case of violence in Court comes from Edmonton (N.) County Court, where a scuffle took place at the back of the Court between the parties in a case. For a few minutes four men and a woman struggled together. Judge Crawford gave orders that the police should be called to eject the combatants, but he was told that the police were not on duty in the Court. That information not unnaturally drew a strong protest from him: "It is really shameful," he said, "that Courts of this importance should be deprived of police assistance, and that scenes like this should be allowed in a court of justice."—*S.J.*, 1931, p. 143.

A Legal Classic.—In the address to which we last week drew attention, Lord Macmillan, while advising the young lawyer to study literature as an aid to the efficient discharge of his professional duties, in no way, of course, seeks to minimise

the importance, nay, the necessity, of mastering, as far as this can be done, the immense field of the common law. What he does is to enter a caveat against a too complete absorption in the study of the law to the exclusion of all else. "The lawyer," he says, "does well from time to time to lift his eyes from his desk and look out of the window on the wider world beyond." He does not commend the example of Chief Baron Palles, who is said to have taken Fearne on "Contingent Remainders" with him for reading on his honeymoon. Fearne's treatise is one of the classics of the law; Mr. Augustine Birrell speaks of it as "a masterly performance (considered by some the best law book ever written)," but we suppose that there are few in these days who could truthfully adapt the language of Mr. Silas Wegg and say that they have been "right slap through Mr. Fearne lately." Even the greatest law books become obsolete or obsolescent; they have had their day and have ceased to be; but few, even in the days when "Contingent Remainders" was in constant practical use have been so enamoured of its charm as to emulate the example of Chief Baron Palles and carry it with them for reading on their honeymoon.—*S.J.*, 1931, p. 144.

Strangers in the House.—The incident last week when a Member of Parliament "spied strangers" and had a solitary survivor turned out of the gallery of the House of Commons seems somewhat of an anachronism in these days when the fierce light of publicity beats upon all that takes place at St. Stephen's. At one time, and that not so far distant, motions for the exclusion of strangers were of frequent occurrence, the House watching with great jealousy any infraction of the rule by which no one other than a member was allowed access to its precincts. For this attitude there may have been grounds in days when it occasionally happened that a stranger pushed his way into the floor of the House, for we are told that as late as 1771 a stranger was actually counted in a division. Again, reports, by which alone most of us get our information regarding proceedings in Parliament, were severely frowned upon, and, as we all know, there ensued a long and bitter struggle before newspapers obtained recognition in a gallery of their own—a struggle which has a constitutional importance. Nowadays, the exclusion of strangers is, happily, of rare occurrence, and is as a rule resorted to only if those admitted to the gallery are guilty of some breach of the rules. It appears that strangers are, nominally at least, under very strict regulation; thus,

no member of the public may read a book or newspaper there; apparently he is expected to give his whole attention to the proceedings taking place on the floor of the House. It may be added that the prohibition against the reading of newspapers is not confined to the House of Commons. We are told in the late Mr. Oswald's treatise on "Contempt of Court," that "it is not respectful to the Court to read newspapers, however respectable, at the bar in view of the Judge;" the parenthesis is delicious. More than once the present writer has had attention called from the Bench to infringements of this rule, which, it may be assumed, has come down to us from times when the power of the press had not established itself as it has in these days.—*S.J.*, 1931, p. 161.

Through American Eyes.—Rather more than a quarter of a century ago, Sir Frederick Pollock wrote that "the interest of our American brethren in English courts and procedure is as inexhaustible as it is flattering." Interest in those matters continues, and, what is still more flattering, it is accompanied by a sincere admiration. If it be true, as someone has said, that a foreign nation is a kind of contemporary posterity with, as a consequence, an entire absence of partiality in its judgments, it would seem that our administration of justice really merits the commendation which is accorded to it by our kin beyond sea. The most recent instance of this may be found in the current issue of the *American Bar Association Journal,* in which Professor Pendleton Howard, of the University of Idaho, writes enthusiastically of our Court of Criminal Appeal. In his introductory sentences he says that "there is probably no feature of the English administration of justice which illustrates in more convincing fashion the fundamental differences between the criminal procedure of that country and that of the United States than the conduct of criminal appeals. Speed of determination, brevity of opinion, paucity of judicial rhetoric, concentration on the outstanding issues of the fairness and legality of the defendant's trial and the reasonableness of the jury's verdict—these are the salient characteristics of the work of the English Court of Criminal Appeal." Surely no more flattering picture of this tribunal could be drawn, and we believe that it is true. Proceeding, the learned writer deals in some detail with a number of points in connection with the methods and practice of the Court, dwelling in particular upon that feature of its influence which we have always regarded as one of the most beneficient, namely, its reflex effect upon the lower

Courts. In the pre-Court of Appeal days instances were common enough of very rough justice, and of extremely heavy sentences, the inferior Courts in which such things happened having no fear of enquiry before their eyes. All that is changed. A complete transcript of the proceedings at the trial is available, and is, or may be, submitted to the scrutiny of the Court of Criminal Appeal, and that fact alone has a powerful and steadying influence in regulating trials and in guarding against sentences which err on the side of severity. And yet, as we are reminded, there were those, and many of them in high places in the law, who looked with much disfavour on the institution of this court. Even the late Sir Fitzjames Stephen thought it an almost insuperable difficulty in the way of setting it up that there was the possibility, nay, the probability, of dissenting judgments. That supposed obstacle was very easily overcome by the provision of allowing one judgment only, as has always been the case in the Privy Council—a rule which might well be adopted in every court, seeing the endless trouble that is caused by dissenting opinions. The law ought above all things to be certain, and certainly is not achieved by divergence of view in the pronouncements of the Court.—*S.J.*, 1931, p. 196.

Poor Persons Procedure.—Both branches of the legal profession may find considerable cause for self-congratulation in the fifth annual report of the work of the Poor Persons Procedure Committee of the Law Society for the period December, 1929, to December, 1930. The public is surprisingly ignorant of the fact that the whole of the work for poor persons done by barristers and solicitors is undertaken voluntarily and gratuitously, and the report with its bare statement of the figures of the achievements of the committee during the period under examination deserves a wide publication. There were, at the beginning of 1929, 937 cases awaiting trial and 1,517 actions or matters were entered during the year in London and in the Provinces. Of these, 1,339 actions or matters were dealt with, of which 1,238 succeeded, forty-three failed and fifty-eight were abandoned or struck out. Of the total number of cases disposed of 94 per cent. consisted of matrimonial proceedings, and in 97 per cent. of the total number of cases poor persons were successful. During the year the total sum recovered by poor person litigants either by judgment or by settlement of their actions was £14,500 as compared with £10,300 in the previous year. In London at the beginning of 1930 there were

116 applications pending, and 1,974 new applications were received during the year, of which 889 were granted, 714 refused, and 341 were otherwise disposed of, leaving at the end of the year 146 remaining to be dealt with. Approximately 70 per cent. of the London cases were matrimonial. In London and the provinces the number of applications disposed of showed an increase from 4,411 in 1928 to 4,904 in 1929. These figures speak eloquently of the substantial and progressive results achieved by lawyers in this entirely gratuitous branch of their activities, often at the cost of great personal inconvenience and sacrifice. It is facts like these which give the lie to the threadbare prejudice against the "scheming and avaricious" lawyer. —*S.J.*, 1931, p. 196.

A Strange Oath.—Recently, in Lord Darling's Court, a Roman Catholic juror declined to be sworn on the Authorised Version of the Scriptures. As a Douai version was not forthcoming, he consented to affirm instead.

Every now and then the formality of the oath gives rise to perplexity in Court and sometimes to humour. One of the oddest errors occurred last year at Willesden Police Court when a communist who would not take the oath desired to affirm. A card was handed to him from which he duly read a form of words. Then the Court suddenly realised that he had been given the wrong card and had trustfully taken the oath of allegiance as a special constable.—*S.J.*, 1931, p. 204.

CONTEMPORARY LEGAL LITERATURE.

Not infrequently does it happen that an advertiser caricatures a living person to serve his purpose and though in such cases the advertiser does not intend to libel, the advertisee feels his privacy intruded upon and desires to stop such intrusion. The law on the point is not definite and settled as yet and a note in the *United States Law Review* for February, 1931 and another in the *Law Quarterly Review* by Professor P. H. Winfield, LL.D., discuss the subject in full detail. In America, the theory that the common law recognised a right of privacy was advanced by Messrs. Warren and Brandeis in 4 *Harward Law Review* 193, basing it on *Pollard* v. *Photographic Co.*, (1888) 40 Ch.D. 345 and *Pope* v. *Curl*, 2 Atk. 342, but it was negatived in 1902 by New York Court in *Robertson* v. *Rochester Folding Box Co.*, 171 N.Y. 538, by a majority of four Judges against three. Chief Justice Parker whose opinion prevail-

ed foresaw in its recognition 'a vast amount of litigation...... ....bordering upon the absurd.' Judge Gray put the other view emphatically: "The proposition is to me an inconceivable one that these defendants may, unauthorisedly, use the likeness of this young woman upon their advertisement as a method of attracting widespread public attention to their wares, and that she must submit to the mortifying notoriety without right to invoke the exercise of the preventive power of a Court of Equity." The *United States Review* points out that in Georgia, Kansas, Kentucky, Louisana and Missouri, the right of privacy has been sustained, and in Michigan, New York, Rhode Island, and Washington it has been denied. In the other States the question has not yet arisen for decision. In New York, the right has to a certain extent been recognised by the Legislature in 1903.

Prof. Winfield discusses the subject more elaborately with the right of privacy both with respect to property and person. He defines infringement of privacy as an "unauthorised interference with a person's seclusion of himself or of his property from the public". To the extent to which the invasion can be brought in under the other known headings of tort, there is no difficulty. But where it does not amount to defamation, trespass, nuisance or the like, the English Common Law recognises no right of privacy. As the Professor says, *Tolley* v. *J. S. Fry and Sons, Ltd.*, (1930) 1 K.B. 467, shows that the right must be recognised by the House of Lords or the Legislature. In that case a firm of chocolate manufacturers published, as an advertisement of their goods, a caricature of the plaintiff, depicting him as playing golf with a packet of their chocolate protruding from out of his pocket. A caddy was also represented with him and a doggerel verse was written underneath it likening the excellence of their chocolates to his drive. The Court of Appeal held that the firm were not liable as for defamation, as it was not capable of a defamatory meaning and by a majority dismissed the action.

As regards personal property, the right is recognised to a considerable degree by the Law of Copyright, Patents, Designs, Trade-marks and Trade-names, the covenants in restraint of trade and the principle which enables the Courts to restrain anyone in a confidential position from disclosing information with which he has become acquainted in that relation.

As regards real property, where there is actual entry on the land, the law of trespass is sufficiently adequate for the

purpose. But where the infringor is not on the land but loitering on the highway in order to spy upon an adjacent landowner or to disturb him in the enjoyment of his property, an action in trespass can be maintained only where the user of the highway is unreasonable. (*Harrison* v. *Duke of Rutland*, (1893) 1 Q.B. 142 and *Hickman* v. *Maisy*, (1900) 1 Q.B. 752.) These cover cases where the plaintiff is the owner of the soil of the highway, but as the law stands it may not help any one who has a less title than ownership or who has none at all. The writer suggests that borough and county councils may make rules to meet cases like the one where a person without causing obstruction to the highway stares at a man's window. Law of nuisance meets the contingency to a certain extent. The Professor refers to a case recorded by the late Professor Kenny (Cases on Tort, 4th Edn., 1926, p. 367), in which a family in Balkham so placed mirrors in their garden as to be able to observe all that passed in a neighbouring dentist's room. The dentist failed in an action to prevent the "annoyance and indignity" caused to him. The writer points out that it should have been actionable as a nuisance as held in *Lyons & Sons* v. *Williams*, (1899) 1 Ch. 255.

The law does not now interfere to prevent a landowner from opening new windows which command a view of his neighbour's premises. The little doubt there was before was set at rest by *Tapling* v. *Jones*, (1865) 11 H.L.C. 290. The building of a high wall which interferes with the neighbour's enjoyment of his garden does not afford a cause of action either. Privacy of property can be secured to a certain extent by contract. In India, as the Professor points out, the question is dealt with by S. 18 of the Easements Act and it is possible to acquire an easement of privacy by virtue of a local custom. The Professor summarises his discussion as to privacy of property thus: "It appears to be tolerably well protected, allowing for the necessity of meeting the requirements of society at large as well as those of the person whose privacy is in question. He can, to a certain extent, secure seclusion of his property by contract. Infringement of it, where there is no contract of this sort, is not regarded as an independent tort, but is redressible by actions for nuisance or for trespass or for negligence or for some other appropriate tort, or (where the property is personal property) breach of copyright, breach of patent, and the like. And in some instances the criminal law provides remedies."

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The other question, namely, whether there is any legal redress for invading the personal privacy of an individual, is more private to answer. Greer, L.J., who denied this right of privacy unless the publication can be said to be defamatory, said in *Tolly* v. *Fry,* that the defendants in publishing the advertisement in question, without obtaining Tolley's consent, "were acting in a manner inconsistent with the decencies of life, and in so doing they were guilty of an act for which there ought to be a legal remedy," but denies the legal remedy relying on *Dockrell* v. *Dougall,* 80 L.T. 556 and *Corelli* v. *Wall,* 22 T.L.R. 532. The Professor discusses the two cases and points out that they did not decide the question at issue so as to fetter the Court of Appeal for deciding it itself. "The balance of existing dicta," says the Professor in conclusion, "seems to incline against an affirmative decision not only in the Courts of first instance, but probably also in the Court of Appeal. The House of Lords, however, certainly have a free hand and it is submitted that social exigencies at the present day would justify them in recognising such a tort." The Professor gives several illustrations where the law as it is is helpless and sums up his conclusion as follows:—"Offensive invasion of personal privacy ought to be an independant tort classified under 'torts to the person' and actionable without proof of social damage. Its truth, where it takes the shape of a representation, ought to be immaterial. As a matter of law, the Judge ought to be entitled to settle whether there is or is not sufficient evidence of offensiveness for a jury to decide, as a matter of fact, whether the invasion was, in the circumstances, offensive. The right of privacy should be capable of express or implied waiver. Fair comment and privilege, as known in the law of defamation, should be applied only sparingly and at most by way of analogy."

The Law Quarterly Review for January, 1931, reproduces the address delivered by Chief Judge Benjamin N. Cardozo at the convocation of Columbia University on September 4, 1930, welcoming the distinguished guests from England, France and Germany to confer on them the honorary degree of LL.D. The address is short and sweet and deserves much consideration, especially at this time, when the Madras Bar Council is considering to take up legal education into its hands. The guests from England were Viscount Dunedin, Lord Tomlin, Lord Macmillan, The Attorney-General Sir William Jowitt, Sir John Simon, Sir Frederick Pollock and Sir Roger Gregory. He says: "A Uni-

versity is a place where one is to teach learning imaginatively." You can pick up facts almost anywhere—in school, in books, in the street, in business, very likely in prison, at any place where life is lived, but if you seek to clothe your teaching with the vestments of grace or poetry or philosophy, with the aspect of fraternity, its proper home is a University". Later on he says that it is quite true of law as it is of anything else, that at first law was taught even at the colleges unimaginatively. It was a thing to be learned by rote from text-books whose pronouncements were to be accepted as an act of faith. Then it was taught scientifically, but still unimaginatively. That was the era of case books, an era of undivided hegemony now drawing to a close. We are looking beyond that now, to something higher and finer. We are trying to teach law and to study it scientifically, and yet imaginatively too,—feeling our way to a new sense of its significance, of the forces that have brought it into being, of the processes that are keeping it alive, and of the ends that it must serve and foster if its high potencies are not to fail. It cannot be denied that law is rapidly growing with changing social conditions and as new situations arise, the old case-law can hardly guide the lawyer and unless he has studied law imaginatively, it may be difficult to apply the principles of law to new situations as and when they arise.

The note in the *United States Law Review* for November, 1930, headed "Claim of immunity from self-incrimination by public officers" calls for more than a passing notice. It appears that certain public officials in the city of New York, also Tammany district leaders, refused to waive the constitutional immunity against self-incrimination when they were called before a grand jury, empanelled by order of the Governor to investigate charges of corrupt money payments to secure appointment or nomination to public office Naturally this seems to have evoked public resentment. Two schools developed to meet this problem, one proposing such amendments to the statute as would terminate the tenure of party office or public office of any official who invokes the constitutional privilege and refuses to answer, and the other declaring in favour of legislation or constitutional amendment to the effect (*i*) that the acceptance of public office shall constitute a waiver by a public officer of the privilege against self-incrimination in respect to any official act or conduct, and (*ii*) that the pleading by any public officer of such privilege against self-incrimination in respect to any official act

or conduct shall create a vacancy in his office. The note discusses the American cases dealing with the legality of such legislation and seems to incline against the constitutionality of legislation, as it interferes with the exercise of a privilege firmly fixed in the *constitution*. It can only be done by an amendment to the constitution.

If citations of American precedents is not noticeably encouraged in English Courts, it is because of the unfamiliarity with the details of the American Law and the conditions obtaining there and the consequent fear that such citations may lead one astray. But in the case of Justice Holmes to whom great men like Lord Sankey, Sir William Jowitt, Sir Frederick Pollock and Chief Judge Cardozo have sent in their felicitations on the occasion of his ninetieth birth day, and in active and brilliant service in the most important sphere of judicial activity, it may not be too much to say in the words of Sir William Jowitt that the Bench and the Bar have repudiated this unfortunate practice referred to by Chief Judge Cardozo in his address of welcome at the Columbia University Convocation on September 4, 1930, as frowning upon American citations. His name is a by-word here and his 'common law' is referred to everyday with avidity. Chief Judge Cardozo calls him 'the great overlord of the law and its philosophy' and the *Harward Law Review* (March, 1931) has allotted more than one hundred pages for him.

BOOK REVIEWS.

MALABAR TENANCY LAW, by Mr. K. P. Ramakrishna Aiyar. Price Rs. 4.

Malabar Tenants' Compensation Act (I of 1900) was a sufficiently difficult Act to construe and it can hardly be said that the construction of the various sections of the Act is even now finally settled. And now we have the new Act XIV of 1930. In the attempt at reconciling the various landed interests, the Legislature has had to enact many complicated provisions about fair rent, *kudiyiruppu*, conditions of eviction, and so forth which must necessarily raise difficult points for construction by the Courts. Mr. Ramakrishna Aiyar has given a helpful commentary on both these Acts. On the Compensation Act, there is a considerable body of case-law which he has carefully digested. On the Tenancy Act he had to proceed without such assistance but the useful reference to the proceedings of the Legisla-

tive Council and the various reports may assist the practitioner in the understanding of the Act though they might not be of use for construing the Act. The book is moderately priced.

THE MALABAR TENANCY ACT, by Mr. C. Govindan Nayar. Price Rs. 12-8-0.

This is a more ambitious attempt, though it confines itself to the Act of 1930 The aim of the work is to indicate the sources of the various provisions of the Act and to elucidate their meaning and the principles underlying them. The author has given a comprehensive historical introduction dealing with the various attempts at the investigation, elucidation and improvements of tenancy conditions in Malabar. He has given copious references to the proceedings of the Legislative Council and the various reports. He has given references to interpretations that have been put upon similar terms in other enactments or judicial decisions which are germane to the present. The rules framed under section 54, the Sudder Court Proceedings dealing with the land tenures, and the Malabar Compensation Act have been given in appendices. In fact, he has gathered together with admirable industry and ability all that is to be known about so recent and important a measure. We have no doubt it will be of great use to practitioners.

THE CRIMINAL RULES OF PRACTICE (MADRAS). Published by V. S. N. Chari. Price Rs. 2.

The publishers have done a useful service in bringing out this volume containing all the Rules of Criminal Practice in the Presidency up-to-date. The Criminal Rules of Practice of 1910 have undergone changes in order to cope with the alterations and additions to the Criminal Procedure Code itself. The appendices contain all the various forms and several orders under the special enactments applicable to Criminal Courts. We are sure this publication will be supplying the demand for the new rules which are of everyday use.

THE PRIVY COUNCIL AND THE FULL BENCH DECISIONS. Edited by A. S. Srinivasa Iyer. Annual Subscription, Rs. 6.

We have pleasure in congratulating the journal for having entered on the second year of its existence. The editor himself hopes that "to publish judgments which have a permanent and perennial interest to lawyers in an easily accessible and readable form is not a disservice". Indeed, it is our hope as well.

THE LAW OF INCOME-TAX IN BRITISH INDIA, MYSORE AND TRAVANCORE, by Mr. N. Rajagopalachariar, B.A., B.L., Advocate, High Court, Madras. Printed at the Madras Law Journal Press, Mylapore. Price Rs. 8.

To the average lawyer not familiar with the intricacies of the Income-tax law, this branch of law presents only an unintelligible set of rules and a confusing mass of case-law. The leading commentaries on the English and Indian Acts while they are undoubtedly learned and exhaustive, have not tended to remove that impression. Mr. N. Rajagopalachariar who as the reporter of the Indian Law Reports for a long number of years had to watch the arguments of eminent Counsel in tax cases apparently realised the difficulties of the profession in understanding the subject and has brought out this work which is conceived in a plan essentially different from the treatment of it by the commentators on the Acts. In the volume under review, the law of Income-tax in British India has been dealt with in the form of a treatise in the natural order of the topics in the course of about 140 pages and nine chapters. The second part of the book gives the Indian Income-tax Act with the notes to the sections, the Income-tax rules and other allied information. In following this method, the learned author has followed the well-known models of Mitra on Limitation and Sir Rash Behari Ghose's Law of Mortgages. The first part, which is easily the more interesting and instructive part of the book, deals with the subject under the following main heads:—Income-tax, Income, Capital, Basis of Taxation, Non-taxable and Taxable Persons, Non-taxable Income, Taxable Income, Accounts, Machinery—Procedure and Remedies, Questions of Law and Fact, and Interpretation of Statutes. All the Indian decisions on the subject including those given by the Mysore and Travancore Courts and most of the English decisions have been given without unnecessarily tiring the reader by a statement of their immaterial facts. The peculiar features of this work are the clearness of the statements of law and the aptness of the decisions cited to the points illustrated by the author. The subject is not merely one of practical interest to the lawyer but to every one who makes an income and it is the triumph of the author that he has evolved a logical scheme out of apparent chaos and has made the subject intelligible and even interesting to the lay reader. We have every hope that the book will before long find its place among the leading text-books on the subject.

THE ENCYCLOPÆDIA OF INDIAN CASE-LAW, CIVIL (1811 to 1929). Edited by Mr. T. P. Gopalakrishna Aiyar, B.A., B.L., Advocate, assisted by a number of Members of the Bar. Each part Re. 1.

This is a work in the course of publication by an enthusiastic body of lawyers of which we have received the first few parts. The plan of the work has, so far as we are aware, no parallel in India; the Encyclopædia of the Laws of England and Halsbury's Laws of England are probably the works on which the authors have modelled their publication. We agree with the authors that the work if properly carried out will involve an almost superhuman effort to produce and bring to completion; and we sincerely congratulate the authors on the noble ideals that they have set before themselves. Further the work of the authors will not be finished as soon as all the volumes have appeared as they will have to be kept up to date by annual supplements as we find in the case of Halsbury's Laws of England. We have read carefully some portions of the parts of the work published hitherto and we venture to think that the statements of the law in some places are inaccurate in some material particulars. For instance at page 13 under the heading "Abatement of Appeals" we find it stated that where a person, as the reversioner to the estate of a Hindu widow sues to set aside alienations made by the widow, the suit cannot be continued after his death, as his right to sue is a personal right and ceases with the death of the plaintiff. The authority by which it is supported is *Sakyahani Ingle Rao Sahib* v. *Bhavani Bosi Sahib*, (1904) 27 Mad. 588. This statement of the law seems to be clearly wrong after the decision of the Privy Council in *Venkatanarayana Pillai* v. *Subbammal*, (1915) 38 Mad. 406, where it was pointed out that in such a suit the plaintiff is suing in his representative capacity and there can therefore be no question of abatement. Indeed, *Sakyahani Ingle Rao Sahib* v. *Bhavani Bosi Sahib*, (1904) 27 Mad. 588, has been expressly overruled by the Full Bench of the Madras High Court in *Varamma* v. *Gopaladasayya*, (1917) 41 Mad. 659. To point to one other instance, we would refer to pages 242 and 243 of the work where it is stated that in a suit by a trustee of a temple for a declaration that a certain piece of temple land could not be the object of a permanent lease, it being temple trust-property in spite of long adverse possession under a grant by a previous trustee of a temple, the mulgeni lessee having been in possession as such for over twelve years would acquire

title by prescription on the authority of *Narsaya Udpa* v. *Venkataramana Bhatta,* (1912) 12 M.L.T. 218. This seems to be an inaccurate statement of the law after the decision of the Privy Council in *Vidya Varuthi* v. *Balusami Ayyar,* (1921) 44 M. 831. The exact point has been decided in the contrary way in *Rao Bahadur Govinda Row* v. *Chinnathurai Pillai,* (1925) 49 M.L.J. 640, following in the earlier case of *Mahomed* v. *Ganapati,* (1889) 13 M. 277, after a careful review of authorities. Such inaccuracies somewhat detract from the merit of the work and we fully hope that in bringing out the later parts, the authors will bestow a greater care in the statements of law. We wish the authors every success in the somewhat stupendous task that they have undertaken and hope that the work will be found to supply a real want.

HINDU LAW SERIES, No. I—STRIDHANAM, IN TAMIL, by Mr. M. S. Parthasarathi Aiyangar, B.A., B.L., Pleader, Tiruvallur. Price As. 8.

The Law of Stridhanam in Hindu Law is a difficult branch of the subject having regard to the various kinds of stridhanam in the various provinces and with regard to their devolution and incidents. On a subject of such difficulty, even statements of learned authors are apt to be misleading or inaccurate; and the client cannot do better than taking himself to a lawyer who can consult the leading authorities on the subject and advise him. A statement of the law of the subject in Tamil with the references to the reports themselves which are in English, cannot, even if accurate, be very helpful. We, therefore, doubt the utility of this publication which cannot be of any real value to the litigant public.

INDIAN SALE OF GOODS ACT, by M. N. Kanji Lal, M.A., LL.B., (Cantab), Bar-at-Law, 1931. Price Rs. 6.

Since the enactment of the Indian Sale of Goods Act, several commentaries of the Act have appeared. The volume under review is conceived in a different plan from the rest. The subject is dealt with by the author in the natural order of the topics discussed in the form of a treatise in the course of eight chapters and not by way of annotations under each section of the Act, thus giving the reader, who is not already familiar with the subject, a connected view of the whole. The decisions up to date are noticed in their appropriate places. The Act

itself is given as an appendix and reference is given under each section to the body of the work where the particular provision has been considered and the cases under it are given. The report of the Select Committee, notes on the clauses of the Bill and the English Act are also given as appendices. We believe that this mode of treatment will be found useful and appreciated by the students and members of the profession.

HINDU LAW IN ITS SOURCES, by Ganganath Jha, 1930, Vol. I. Price Rs. 10.

The learned author has done a distinct service to the cause of comparative jurisprudence by bringing out this work which gives a faithful translation of the original texts of Hindu Law in its various branches. It is well known that the British Courts of Justice administer the rules of Hindu Law only in some of its branches, *e.g.*, marriage, adoption, inheritance, etc.; and in other respects we are governed by the British Indian Codes or the rules of English Common Law or Equity which are adopted in this country as rules of justice, equity and good conscience. A statement of the Hindu Law in the other branches, in the language of the original text-writers themselves with an accurate translation of the same is of great value to the jurist though not to the work-a-day lawyer. In the first two chapters, the author has discussed the sources of Hindu Law, a subject which is found in all treatises on Hindu Law, with this distinction that the author has brought to bear on the subject his great learning in *Purva Mimamsa* in illustrating his points. He has shown in many places the freshness of outlook in the discussion of the relative values of the various sources of law in the ancient books themselves. In many respects, the *Tantravartika* of Kumarila Bhatta from which long extracts are given will do credit to any modern thinker on the questions dealt with. The later chapters giving the texts and translations of the various branches of law, like judicial procedure, evidence, debts, deposits, master and servant, crimes, etc., are valuable as giving a clear insight into the law and practice of the ancient Hindus. While there are striking similarities, even in matters of procedure, there are also striking dissimilarities, as for instance what we find at page 92, when an appeal was preferred from the decision of a Court and the appeal succeeded, the decree-holder in the first Court and curiously *even the members of the first Court were fined* double the amount of the claim involved, if the wrong judgment was due to mistake on the part of the

Judge and assessors and if it was due to the witnesses they were fined. To give only one instance of similarity, we find at page 493, in cases of adultery only the man was punished and the woman was not punished by the State, thus bearing a striking resemblance to section 497 of the Indian Penal Code. The second volume which is in the press, we understand, deals with inheritance and will therefore be of practical interest to lawyers. We have no doubt that this work will be widely appreciated by all who are interested in comparative jurisprudence and Hindu jurisprudence in particular.

[END OF VOL. LX.]